



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Serving Maine People & Protecting Their Environment

COMPLIANCE POLICY

PURPOSE

In serving the citizens of Maine, the Department of Environmental Protection ("Department") seeks to inspire a commitment to environmental protection and enhancement, promote innovation, provide exceptional customer service, and rely on strong science and state-of-the-art technology to achieve compliance solutions. This compliance policy provides a unified statement that integrates both traditional non-enforcement and enforcement tools, recognizing that a broad range of tools are available to achieve, and go beyond, compliance. This policy is intended as a guideline for use by the Department in its efforts to promote compliance, prevent violations, and pursue the timely, consistent and equitable resolution of violations of the laws, regulations and permits the Department administers. This policy also provides the framework from which bureau specific compliance policies should be developed. Those policies will establish program specific descriptions of how the guidance in this document will be applied.

OBJECTIVES

The Department's compliance objectives are to:

- encourage voluntary compliance with environmental statutes, regulations, licenses and permits;
- provide incentives for regulated entities to go beyond compliance with source reduction and pollution prevention in order to achieve environmental excellence;
- establish an appropriate and consistent approach to violations and violators;
- ensure that appropriate corrective and future preventative actions are taken once a violation has occurred;
- remove any incentives or opportunities gained by violating an environmental requirement; and
- deter or prevent future violations.

COMPLIANCE TOOLS

The Department uses a variety of options, or "tools," to encourage regulated entities to achieve compliance. These tools are used to avoid as well as resolve compliance problems. In each particular circumstance, the Department evaluates the facts and exercises its discretion to determine which tool or combination of tools are appropriate to achieve compliance with environmental requirements. The result is a consistent and predictable compliance approach that retains enough flexibility to deal with the unique facts of each case. The order of the following compliance tool list is not intended to imply any preference among, or necessary progression regarding, use of the tools.



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- **Education and Outreach.** The Department offers education and outreach as a proactive means of helping the public understand, support, and comply with environmental laws, and to teach responsible environmental stewardship. Education and outreach is the responsibility of all Department staff on a daily basis and is the cornerstone for minimizing adverse environmental impacts and preventing environmental violations. It ranges from holding seminars that provide wide segments of the population with general information to targeting particular facilities, locations, ecosystems, or business sectors. Education and outreach is an effective tool for educating the public about new regulatory requirements or stemming the tide of small, commonly observed violations. When a violation is discovered, education on how to comply and prevent recurrence is often an integral part of resolving that violation.
- **Technical Assistance.** Technical assistance is targeted education and outreach where the expertise of the Department is used to help solve a particular environmental problem at a particular location. Technical assistance can take the form of process consultation and advice in manufacturing or commercial operations aimed at reducing adverse environmental impacts through pollution prevention. It may be done informally as part of an inspection or telephone call, or more formally through one of the Department's technical assistance programs and designated technical assistance staff in the bureaus. Regulatory assistance, i.e. helping entities to understand regulatory requirements, is also a primary focus of the Department and available as part of our daily activities. In the event of a violation, technical and regulatory assistance may be provided when remediating and correcting the violations at issue.
- **Voluntary Compliance.** The Department expects environmental requirements to be complied with voluntarily. Entities must be proactive in their compliance efforts by evaluating plans and operations to determine whether environmental requirements apply. The Department has established programs and policies -- Environmental Leadership Program ("ELP"), Small Business Compliance Incentives Policy, Compliance Leadership through Environmental Audits and Negotiations-Pollution Prevention Program ("CLEAN-P2") -- to further encourage voluntary compliance and beyond compliance activities by providing incentives to entities that approach the Department seeking regulatory and technical assistance. The Department views an entity's voluntary compliance actions and overall environmental performance record when evaluating good-faith efforts to comply with environmental requirements. In this regard, the Department has found that a failure to consistently evaluate plans and operations to determine whether environmental requirements apply increases the likelihood of non-compliance.
- **Licensing.** The Department issues customized licenses that balance environmental protection with the unique operations existing at a regulated entity's site and facility. License provisions are clearly and concisely written to promote compliance and expedite any future compliance efforts. The licensee is responsible for understanding all provisions contained in their license. In this regard, the Department expects licensees to determine the feasibility of conforming

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with all provisions contained in their license prior to accepting that license from the Department. In addition, the licensee is responsible for ongoing compliance evaluations and immediately informing the Department of any compliance problems. The Department views immediate disclosure of compliance problems and immediate work to permanently resolve an issue as good-faith efforts that will be considered in determining an appropriate response. Failure to consistently evaluate compliance with license provisions and immediately disclose and correct license compliance problems increases the likelihood and severity of an enforcement response.

- **Enforcement.** Regular inspections and enforcement of environmental requirements are key elements in gaining compliance. While a variety of tools exist for preventing and resolving compliance problems, the Department may pursue formal, written, and legally binding resolutions to environmental violations where corrective action and/or penalties are appropriate. The Department will select an appropriate course of action for enforcing Maine's environmental requirements based upon the facts of a case and the *Considerations for Determining Appropriate Responses* contained in this Policy. As a result, the Department may use any one tool, or combination of tools, as each is appropriate to achieve compliance with environmental requirements. The Department's preference in resolving civil enforcement actions is to reach agreements as quickly as possible that: remediate environmental damage; restore natural resources to appropriate conditions; impose penalties that capture any economic benefit gained by a violator; and, deter similar actions in the future.
 - A. Letter of Warning.** The Department usually corresponds with entities upon discovering noncompliance with environmental requirements. A Letter of Warning ("LOW") is sent to provide regulated parties with information regarding an alleged violation where the matter is relatively minor and further civil enforcement action is not anticipated if the violation is promptly corrected. A LOW identifies the violation(s) and may contain a schedule for coming into compliance. Where a LOW has been sent, the Department views prompt correction and avoidance of repeat violations as essential. A history of LOWs or a LOW not followed with prompt corrective action increases the likelihood that additional enforcement actions will be pursued.
 - B. Notice of Violation.** A Notice of Violation ("NOV") is appropriate where a significant violation exists and the probability of future civil enforcement action is substantial. The Department must issue a NOV prior to initiating a civil enforcement action. A NOV will at least describe the alleged violation, cite to statutory, regulatory, permit, and license provisions alleged to have been violated, and provide a deadline for performing corrective action and response to the notice. Performing the corrective action identified in a NOV does not preclude additional civil enforcement actions or additional remedial work. The Department views prompt corrective action where a NOV has been sent and avoidance of repeat violations as essential.

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- C. Administrative Consent Agreements.** The Department pursues voluntary agreements for corrective action and/or penalties to resolve environmental violations quickly and effectively. The Department provides Administrative Consent Agreements to alleged violators in order to achieve administrative settlement rather than pursue an action in court. The Department of the Attorney General (“AG”), Board of Environmental Protection, and Department enter into Administrative Consent Agreements to achieve final resolution of pending civil enforcement actions. An Administrative Consent Agreement represents a legally binding contract between a violator and the State of Maine that prescribes appropriate penalties and corrective actions. An Administrative Consent Agreement offers resolution without the time and expense of a court action.
- **Supplemental Environmental Projects.** The Department and AG may consent to a violator performing an environmentally beneficial project, or so-called Supplemental Environmental Project (“SEP”), as part of resolving an administrative enforcement action with a consent agreement. While SEPs are not a tool for bringing a violator into compliance, projects may be performed to mitigate certain penalties. The Department implemented a final policy regarding the acceptability and operation of SEPs on August 1, 1996, which must be consulted for details on the use of this tool.
- D. 80K Actions.** Certified Department staff may pursue violations of environmental requirements in District Court under Maine Rule of Civil Procedure 80K. These court actions are typically filed on behalf of the Department where administrative settlement efforts have failed. The goals of pursuing civil enforcement actions under Rule 80K are to efficiently and effectively resolve violations without the relatively significant expense and inefficiency of pursuing actions in superior court.
- **Mediation.** As part of our efforts to consensually resolve civil enforcement actions in the most efficient and effective manner, the Department will pursue mediation and consensual decrees in 80K cases pursuant to 38 M.R.S.A. § 347-A(4)(E) in each appropriate circumstance.
- E. Case Referral to the Department of the Attorney General.** The AG is constitutionally responsible for acting as the Department’s legal counsel and is the chief law enforcement agency for the State. The Department refers civil enforcement actions to the AG when administrative settlement can’t be reached and serious violations exist, immediate injunctive relief is sought, and/or significant legal issues are in dispute. Criminal enforcement actions are automatically referred to the AG’s Office for pursuit in an appropriate judicial forum.
- F. Enforcement by Federal, State, and Local Entities.** Independent authority to enforce certain environmental laws exists in federal, state, and local authorities, including the AG. The Department works closely with these entities and, where appropriate, pursues joint

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enforcement actions. Every effort is made to coordinate enforcement actions among federal, state, and local entities.

CONSIDERATIONS FOR DETERMINING APPROPRIATE RESPONSE

While the compliance tool, or combination of tools, that may be applied in response to a violation varies according to a number of factors, the Department's goals are always to gain compliance, protect the environment, and treat each violator in an evenhanded manner. The questions and analysis in this section provide guidance for determining the appropriate response to a violation. These considerations are cumulative and will not be applied in isolation.

- **What is the environmental impact / significance of the violation?**

When the area impacted by a violation is large or particularly sensitive, the likelihood of an enforcement response is high and the severity of that response increases. Likewise, where actual environmental damage exists or the violation has continued for an extended period of time, the likelihood of an enforcement response is high and the severity of that response increases. Technical paperwork violations, so-called "paper violations" (e.g., failure to submit and maintain required records, monitor downtime, or renew a license) are significant to the extent they affect the Department's ability to determine whether a company has been in compliance, the level of non-compliance, or the extent and length of an adverse environmental impact resulting from non-compliance. Failure to comply with other requirements, such as training, will be evaluated on the potential effect the failure can have on a facility's ability to maintain compliance. Other factors related to environmental impacts and violation significance that will determine the nature of an enforcement response include: whether the activity which caused the violation was inherently dangerous or the pollutants involved are hazardous; how far beyond standards or license limits the activity was; the number of violations involved; and whether there were any potential public health risks or environmental risks posed by the violation.

- **Under what circumstances were the violations discovered?**

Where the Department discovers noncompliance during an announced or unannounced compliance inspection or as a result of investigating complaints from the public, the likelihood of an enforcement response is significantly greater than where a party voluntarily requests compliance or technical assistance, or where the results of an internal or third party compliance assessment are voluntarily reported. Indeed, the Department has established programs under our Small Business Compliance Incentives Policy which protect entities that voluntarily approach us seeking regulatory and technical assistance from civil penalties, so long as any violations discovered for the first time are corrected within a prescribed time period. A demonstrated commitment to voluntary compliance and a strong overall environmental compliance record diminish the likelihood or severity of an enforcement

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response. The Department views immediate disclosure of compliance problems and immediate work to permanently resolve issues as good-faith efforts that will be considered in determining an appropriate compliance response. The failure to consistently evaluate compliance with regulatory provisions and immediately disclose and correct compliance problems increases the likelihood and severity of an enforcement response.

- **What were the causes and circumstances of the violations?**

While the Department intends to be proactive in providing education and outreach, we expect regulated parties to know and comply with legal requirements. In this regard, violators that knew or should have known legal requirements or that a violation was reasonably foreseeable are more likely to face an enforcement response from the Department. For example, if a person ignores relevant training or technical assistance, is in a business heavily and directly regulated by the Department (e.g., contractors, large industrial facility operators, businesses involved with hazardous waste, landfill operators, etc.), has a history of similar compliance problems, or it is otherwise evident that they were in a position to avoid the violation, the likelihood of an enforcement response is high and the severity of that response increases, regardless of environmental impact. However, if a violation is inadvertent, involves a recently adopted regulatory requirement, is not part of a pattern or history of noncompliance, could not have been prevented, or is mitigated and reported immediately upon discovery, then the likelihood of an enforcement response is reduced. A demonstrated commitment to voluntary compliance and a strong overall environmental compliance record also diminish the likelihood or severity of an enforcement response.

- **What action was taken once there was awareness of a violation?**

As with all laws, environmental laws rely heavily on voluntary compliance and self-reporting. If a violation is reported immediately, environmental damage is restored immediately, and corrective action is taken immediately, the likelihood or severity of an enforcement response diminishes. Likewise, the quality of those actions, whether they were taken before or after Department involvement, whether or not they truly cured any immediate problem, and/or were designed to prevent future problems are all factors that determine a compliance response. A violator that permanently removes the potential for recurrence will be considered to have demonstrated a greater willingness to comply than a violator applying a temporary fix on a problem that resulted in noncompliance.

- **Is there a financial gain associated with the violation?**

The Department will examine whether there was any economic benefit (e.g., avoided disposal costs, cost of required pollution control equipment, license fees, etc.) that accrued to the violator as a result of the violation. In those instances where a significant economic benefit is associated with noncompliance, the likelihood that the Department will pursue an enforcement

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response to assess penalties that at least recover any economic benefit is high. Recovery of an economic benefit levels the playing field between those companies or individuals which are in compliance and those that are out of compliance.

- **What is the regulated party's overall environmental record?**

The Department will consider a violator's environmental record in determining the nature of a compliance or enforcement response. This consideration will include aggregate performance in all media programs as well as any trend toward or away from overall compliance.

CONCLUSION

The Department is dedicated to preventing, abating and controlling the pollution of Maine's air, water and land in order to preserve, improve and prevent the diminution of Maine's natural environment. We envision a Maine where people and companies include, in every aspect of their daily lives, a commitment to protection of the environment. While entities must be proactive in their efforts to voluntarily comply with environmental requirements, the Department is available for technical and regulatory assistance. Where an instance of noncompliance occurs, the Department will look at the circumstances of the violation, including its type, seriousness, environmental impact, and the entity's overall environmental performance record, and determine which tools are appropriate to achieve compliance with environmental requirements.

FORCE AND EFFECT

The policies and procedures in this document do not constitute rule-making by the Department and as such do not create any right or benefits, substantive or procedural, enforceable at law or equity. The Department may take action that varies from the policies and procedures contained in this document if the Commissioner considers it appropriate in a specific case. In addition, while Department decisions regarding compliance matters are customarily respected, the AG retains independent law enforcement authority over environmental requirements.

OTHER DEPARTMENT POLICIES INTEGRAL TO COMPLIANCE ACTIVITIES

Administrative Consent Agreement Policy, dated and signed by the Department 12/11/89.

Small Business Compliance Incentives Policy, dated 2/14/96 (as amended).

Supplemental Environmental Projects Policy, dated 8/1/96.

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